

No. 11007

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

MIGUEL MORACHIS, Owner and Claimant of
one Plymouth Truck, 1940 Pickup, Motor No.
T-105-2887, Model PT 105, Sr. 9209823,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

MAY 24 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

FRANK E. FLYNN, Esquire,

United States Attorney,
Phoenix, Arizona.

JOHN P. DOUGHERTY, Esquire,

Assistant United States Attorney,
Tucson, Arizona.

Attorneys for Appellant.

RUFFO ESPINOSA, Esquire,

Nogales, Arizona,

Attorney for Appellee.

In the District Court of the United States
for the District of Arizona

No. Civil—245—Tucson

UNITED STATES OF AMERICA,

Libelant,

vs.

7 BOXES LEMONS, 307 Lbs. Gross; 2 BOXES
GRAPEFRUIT, 92 Lbs. Gross; 10 CASES
CANNED MILK, 48 cans ea., 14½ oz. net
weight each, and ONE TRUCK, 1940 PICK-
UP, MOTOR No. T-105-2887, PLYMOUTH
MODEL PT105, SR. 9209823.

Respondents.

JUDGMENT

The Libel of Information of the United States for the forfeiture of the above-described property having been filed herein on the 10th day of June, 1944, and due process having issued thereon and due notice thereof having been made, and no claim to said 7 Boxes Lemons, 307 Lbs. Gross; 2 Boxes Grapefruit, 92 Lbs. Gross, and 10 Cases Canned Milk, 48 cans ea., 14½ oz. net weight each, having been made in due time and no answer or petition having been filed, in accordance with the rules and practices of this Court, and the time to file such claim and appearance having expired the default thereof is hereby entered, and it further appearing that one Miguel Morachis in due time appeared and filed herein his verified petition claiming that he is the owner of said 1940 Plymouth

Truck and requesting that the same be restored to him, and the Court having heard the evidence and being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that the said 7 Boxes Lemons, 307 Lbs. Gross; 2 Boxes Grapefruit, 92 Lbs. Gross, and 10 Cases Canned Milk, 48 cans ea., 14½ oz. net weight each, be and the same are hereby forfeited to the United States of America for the reasons stated in the Libel, and

It Is Further Ordered, Adjudged and Decreed that the United States Marshal for the District of Arizona deliver the said ten cases of canned milk to the Warden of the Federal Prison Camp, Tucson, Arizona, or his duly authorized representative; and

It Is Further Ordered that the proceeds from the sale of the said 7 Boxes Lemons and 2 Boxes Grapefruit, heretofore deposited with the Clerk of this Court by the Marshal be disposed of according to law, and

It Is Further Ordered, Adjudged and Decreed that the petition of said Miguel Morachis for the restoration of said respondent, 1940 Plymouth Truck to him, the owner thereof, be and the same is hereby granted.

Dated this 27th day of January, 1945.

ALBERT M. SAMES

United States District Judge

[Endorsed]: Filed Jan. 27, 1945.

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

1. The Court erred in ordering restoration of the respondent, one Plymouth Truck pickup automobile, 1940 model, to petitioner, Morachis.

2. The Court erred in failing to hold the aforesaid 1940 pickup truck for forfeiture to the United States.

3. The Court erred in failing to order forfeiture of the aforesaid 1940 pickup Plymouth truck to the United States.

4. The Court erred in holding that Title VI of the Act of June 15, 1917, Chapter 30, 40 Stat. 223, as amended did not provide forfeiture of the vehicle containing the lemons, grapefruit and canned milk under the circumstances revealed in the findings of fact herein.

5. The Court erred in finding that the aforesaid 1940 pickup Plymouth truck was not being taken out of the United States in violation of law within the meaning of Title VI of the Act of June 15, 1917, Chapter 30, 40 Stat. 223 as amended, (46 U.S.C. §401-407 incl.).

F. E. FLYNN

United States Attorney

JOHN P. DOUGHERTY

Assistant United States
Attorney

[Endorsed]: Filed Feb. 1, 1945.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, libelant above-named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Judgment entered herein on the 27th day of January, 1945, granting the petition of Miguel Morachis for the restoration to him of the 1940 Plymouth truck.

Signed F. E. FLYNN

United States Attorney

JOHN P. DOUGHERTY

Asistant U. S. Attorney, Attorney for Appellant,
412 Federal Building, Tucson, Arizona.

[Endorsed]: Filed Feb. 1, 1945.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE
TO APPEAL

Comes now the Libelant, the United States of America, by F. E. Flynn, United States Attorney for the District of Arizona and petitions the Court for an allowance to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment of this Court, in the above-entitled case, granting the petition of Miguel

Morachis for the restoration of the respondent 1940
Plymouth Truck.

F. E. FLYNN

United States Attorney

JOHN P. DOUGHERTY

Assistant U. S. Attorney

Attorney for Libelant.

[Endorsed]: Filed Feb. 1, 1945.

[Title of District Court and Cause.]

ORDER

It appearing to the Court that the petition of F. E. Flynn, United States Attorney for the District of Arizona, on behalf of the libelant herein for an allowance to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment of this Court in the above-entitled case granting the petition of Miguel Morachis for the restoration of one 1940 Plymouth Truck has been filed herein,

It Is Therefore Ordered that the said petition be, and the same is, hereby allowed.

Dated this 7th day of February, 1945.

ALBERT M. SAMES

United States District Judge

[Endorsed]: Filed Feb. 7, 1945.

[Title of District Court and Cause.]

ORDER—STAY OF EXECUTION

It appearing to the Court that an appeal has been taken by the United States of America from that part of the final judgment of this Court entered herein granting the petition of claimant for the restoration of that certain 1940 Plymouth Truck and a Petition for Stay of Execution has been filed on behalf of said United States.

It Is Therefore Ordered that the operation and enforcement of said Judgment, in so far as it includes that 1940 Plymouth Truck, is stayed pending the result of said appeal in the Circuit Court of the United States for the Ninth Circuit.

ALBERT M. SAMES

United States District Judge

[Endorsed]: Filed Feb. 7, 1945.

In the District Court of the United States
for the District of Arizona

No. Civil—245—Tucson

UNITED STATES OF AMERICA,

Libelant,

vs.

7 BOXES LEMONS, 307 Lbs. gross; 2 BOXES
GRAPEFRUIT, 92 Lbs. gross; 10 CASES
CANNED MILK, 48 cans ea., 14½ oz. net
weight each, and ONE TRUCK, 1940 PICK-
UP, MOTOR No. T-105-2887, PLYMOUTH
MODEL PT105, SR. 9209823,

Respondents,

MIGUEL MORACHIS,

Claimant.

CITATION ON APPEAL

To: Ruffo Espinosa, Proctor for Miguel Morachis,
the claimant herein:

Greeting:

You Are Hereby Cited and Admonished to be
and appear in the United States Circuit Court of
Appeals for the Ninth Circuit, to be holden at the
City of San Francisco, State of California, forty
(40) days from and after the date of this citation,
pursuant to an order allowing an appeal duly made
and entered and filed in the office of the Clerk of
the above-named District Court under date of Feb-
ruary 7, 1945, wherein the United States of America

is appellant and Miguel Morachis is appellee, to show cause, if any there be, why the judgment rendered against said appellant on January 27, 1945, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Dated at Tucson, Arizona, this 8th day of February, 1945.

ALBERT M. SAMES

Judge, United States District Court for the District of Arizona.

Service of the above Citation upon Ruffo Espinosa, Proctor for said Miguel Morachis, at Nogales, Arizona, on the 10th day of February, 1945, is hereby acknowledged.

RUFFO ESPINOSA

Proctor for Appellee

[Endorsed]: Filed Feb. 12, 1945.

[Title of District Court and Cause.]

AGREED STATEMENT.

Comes now the Libelant herein, the United States of America, by its proctor F. E. Flynn, United States Attorney for the District of Arizona, and the Claimant of said 1940 Plymouth truck, Miguel Morachis, by his proctor Ruffo Espinosa, under Rule 5, paragraph 4, of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit, and stipulate and agree that the Findings of Fact, in the above-entitled

case, by Judge Albert M. Sames, Judge of the United States District Court for the District of Arizona, are true and complete statements of all the essential facts that were averred, proved, and sought to be proved, in the proceedings of the trial of this case, and that the same are as follows:

1. That on or about the 3rd day of June, 1944, at the Port of Nogales, Arizona, the Collector of Customs seized the following described property, to-wit: 7 boxes lemons, 307 lbs. gross; 2 boxes grapefruit, 92 lbs. gross; 10 cases canned milk, 48 cans ea., 14½ oz. net weight each, and one truck, 1940 Pickup, Motor No. T-105-2887, Plymouth Model PT105, SR. 9209823, upon the grounds that the said food products were then and there about to be exported, shipped from or taken out of the United States of America in the said vehicle without any special export license having been issued by Foreign Economic Administration under the Export Control Act of 1940, as amended, and on the further ground that the truck contained articles about to be exported, shipped from or taken out in violation of law, and that the said truck was intended to be used for said exportation.

2. That within ten days after the seizure of said property an application on oath was duly filed and a warrant for further detention of the 1940 Plymouth truck and the lemons, grapefruit and canned milk was issued by this United States District Court on June 7, 1944, herein.

3. That within 30 days after said seizure a verified petition was filed in this Court by Miguel

Morachis claiming that he was the owner of said Plymouth Truck and that said truck was not intended to be exported from the United States of America to the Republic of Mexico and requesting that said truck be restored to him.

4. That no petition was filed within 30 days after said seizure for the restoration of the 7 boxes of lemons, 307 lbs. gross, 2 boxes grapefruit, 92 lbs. gross, and 10 cases canned milk, 48 cans each, 14½ oz. net weight each.

5. Miguel Morachis at the time of the seizure here involved had an office in the wholesale fruit office in Nogales, Arizona, where he bought produce. He was then in the business of buying and selling produce and shipping it from the United States into Mexico.

6. That on said day of June 3, 1944, the employees of said Miguel Morachis who were conducting his business in his absence arrived at the Customs Station at Nogales, Arizona, with the said Plymouth Truck containing the aforesaid lemons, grapefruit and canned milk and presented to the Customs Inspector a Shipper's Export Declaration to export 3 crates of celery, 2 boxes of sweet potatoes, 20 boxes of fresh bread and 10 cases of apples.

7. That in examining the contents of the said Plymouth Truck, the Inspector found concealed beneath the bread in separate bread cartons 10 cases of canned milk which had not been declared and further examination revealed that the boxes labelled "apples" actually contained lemons and grapefruit.

8. That one of the employees arriving with the truck as aforesaid, one Rodolpho Tapia, shipping clerk and secretary of said Miguel Morachis, was in complete charge of the business of said Morachis. He was in charge of making purchases and the exportation back and forth. Morachis just checked the bills every month or so.

9. That the said employees of Miguel Morachis were instructed by Rodolpho Tapia to attempt the smuggling and that said Tapia admitted that he had no license to export the said milk, grapefruit or lemons and had attempted to smuggle the produce across the border.

10. That the said undeclared, concealed and falsely declared milk, grapefruit and lemons were, at the time of seizure, about to be exported from or taken out of the United States in violation of law and without a special license therefor having been issued by the Foreign Economic Administration.

11. That the said Plymouth Truck, registered under the laws of Arizona, was in constant daily use between Nogales, Mexico and Nogales, Arizona, for a period of about two years prior to the date of seizure, shipping produce from the United States into Mexico.

12. That said Plymouth Truck was used in this instance in an attempt to carry articles out of the United States without the required export license.

13. That on the 10th day of June, 1944, a libel of forfeiture was filed herein against the Plymouth

Truck and the lemons, grapefruit and canned milk proceeded against herein.

14. The 1940 Plymouth Truck here proceeded against was used by Morachis and his aforesaid employees at Nogales, Arizona, in their produce business.

15. For the four or five months previous to the seizure Morachis had not driven the truck as he was busy on other matters. The truck at the time of seizure was being driven by Tapia.

16. When the truck, canned milk, lemons and grapefruit were seized, the truck was going from the United States into Mexico, and the contents of the truck were being shipped into Mexico.

17. The value of the canned milk was around \$50.00.

18. There was no declaration of the aforesaid milk, grapefruit and lemons before or at the time of the aforesaid seizure.

19. No individual, general, program or special project license is shown to have been obtained from Foreign Economic Administration for the aforesaid exportation or taking out of the lemons, canned milk and grapefruit.

20. The aforesaid employees of Morachis, who were conducting his business with his consent in his absence, used the aforesaid Plymouth Truck with the intention of, and as a means of, exporting or taking out of the United States and into Mexico the aforesaid lemons, grapefruit and canned milk without having declared said lemons, grapefruit and canned milk.

Then upon such Findings of Fact the trial Court made the following Conclusions of Law, which Libelant contends are not justified by the law and the evidence:

Now therefore this Court concludes that the said 7 boxes of lemons, 307 lbs. gross, 2 boxes grapefruit, 92 lbs. gross, and 10 cases canned milk, 48 cans each, 14½ oz. net weight each were, at the time of seizure, about to be exported from the United States into the Republic of Mexico in violation of the Export Control Act of 1940, as amended, and are subject to forfeiture to the United States herein;

And this Court further concludes that the said Plymouth Truck was not about to be exported, shipped from or taken out of the United States into the Republic of Mexico in violation of law.

And further that Title VI of the Espionage Act of 1917, (22 U.S.C. 401-407 incl.) does not authorize forfeiture of a vehicle containing articles about to be unlawfully exported or taken from the United States but only authorizes seizure and detention of the vehicle so used.

The Libelant contends that the Assignments of Error, accompanying this Petition, contain a concise statement of the points relied upon by it to reverse the Judgment of the trial Court.

It Is Further Stipulated that the Transcript of Record shall include the Assignments of Error, Notice of Appeal, Petition for Order Allowing Appeal, Order Allowing Appeal, Order Staying Ex-

ecution, Citation, and this Agreed Statement, and Order Extending Time for filing record.

Witness our hands this 6th day of March, 1945.

F. E. FLYNN

United States Attorney

JOHN P. DOUGHERTY

Assistant U. S. Attorney

Proctor for Libelant

RUFFO ESPINOSA

Proctor for Claimant

[Endorsed]: Filed March 6, 1945.

[Title of District Court and Cause.]

ORDER EXTENDING TIME

On the motion of John P. Dougherty, Assistant United States Attorney, attorney for the Appellant in the above-entitled case, it is hereby ordered that the time for filing the record on appeal and docketing the action be, and the same is, hereby extended to and including the 26th day of March, 1945.

Dated: March 5th, 1945.

ALBERT M. SAMES

United States District Judge

[Endorsed]: Filed March 5, 1945.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am custodian of the records, papers and files of the said Court, including the records, papers and files in the case of The United States of America, Plaintiff, versus One Truck, 1940 Pickup, et al, Respondents, numbered Civil—245—Tucson, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 19, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the Agreed Statement filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Tucson, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$4.40, and that a memorandum of said sum has been entered in said cause by me for services rendered on behalf of the United States.

I further certify that the original citation issued in the said cause is hereto attached and made a part of this record.

Witness my hand and the Seal of the said Court this 15th day of March, 1945.

(Seal)

EDWARD W. SCRUGGS

Clerk.

[Endorsed]: No. 11007. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Miguel Morachis, Owner and Claimant of one Plymouth Truck, 1940 Pickup, Motor No. T-105-2887, Model PT105, Sr. 9209823, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed March 19, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11007

UNITED STATES OF AMERICA,

Appellant,

vs.

7 BOXES LEMONS, 307 lbs. gross; 2 BOXES
GRAPEFRUIT, 92 lbs. gross; 10 CASES
CANNED MILK, 48 cans each, 14½ oz. net
weight each, and ONE TRUCK, 1940 PICK-
UP, MOTOR No. T-105-2887, PLYMOUTH
MODEL PT105, SR. 9209823,

Appellee,

MIGUEL MORACHIS,

Claimant.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD

Now comes the appellant herein by his Proctor, Frank E. Flynn, United States Attorney for the District of Arizona, and designates the agreed statement heretofore signed and submitted by the Proctors for both appellant and appellee, as embracing all the record necessary for the consideration of this appeal.

Said appellant hereby desires to adopt as his

points on appeal the assignments of error he heretofore made and that are included in said records.

FRANK E. FLYNN,

United States Attorney

JOHN P. DOUGHERTY

Assistant U. S. Attorney

Proctor for Appellant.

Ruffo Espinosa, Proctor for appellee and the claimant, consents that the above designation of the record is final and complete.

RUFFO ESPINOSA

Proctor for Appellee and

Claimant.

[Endorsed]: Filed March 29, 1945. Paul P. O'Brien, Clerk.

